

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ALEX WRIGHT, both  
individually and, in  
addition, on behalf of other  
similarly situated employees,

3:15-CV-02058-BR

OPINION AND ORDER

Plaintiff,

v.

SPECIAL LOGISTICS PORTLAND,  
LLC, a Texas limited  
liability company, and  
PEOPLEASE LLC, a South  
Carolina limited liability  
company,

Defendants.

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Attorney for Plaintiff

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Attorneys for Defendant Peoplease LLC

**BROWN, Judge.**

This matter comes before the Court on the Motion (#11) of Defendant Special Logistics Portland, LLC (SLP) to Set Aside Default. For the reasons that follow, the Court **GRANTS** SLP's Motion and sets aside the Order of Default (#8) entered against SLP on January 11, 2016.

**BACKGROUND**

Plaintiff was employed by Defendant SLP at some point before October 30, 2015. SLP is a Texas LLC operating as a freight-delivery service and owned by Al LaRose and Greg Back.

On October 30, 2015, Plaintiff Alex Wright filed an Individual Class and Collective Action Allegation Complaint in this Court against SLP and Defendant Peoplease, LLC, in which Plaintiff alleged Defendants failed to pay him minimum wages in violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 206 and Oregon law; failed to pay Plaintiff wages on termination in violation of Oregon law; and made unlawful deductions from Plaintiff's paycheck in violation of Oregon law.

On December 10, 2015, Plaintiff served SLP's Registered Agent, Gregory Back, at his office by leaving a copy of the Complaint and Summons with Sheryl England, Terminal Manager and person authorized to accept service on behalf of Back. Decl. of Jon Egan, Ex. 2 at 1. SLP did not file a responsive pleading to the Complaint.

On January 11, 2016, the Court entered an Order of Default against SLP for failure to file a responsive pleading within 20 days of service of the Complaint and Summons.

On February 24, 2016, SLP filed a Motion to Set Aside Default in which it requests the Court to set aside the Order of Default entered against SLP. The Court took SLP's Motion under advisement on March 29, 2016.

### **STANDARDS**

The court has discretion to set aside an order of default for "good cause." Fed. R. Civ. P. 55(c). *See also Brandt v. Am. Bankers Ins. of Fl.*, 653 F.3d 1108, 1111-12 (9<sup>th</sup> Cir. 2011) ("In short, [whether to set aside a default] is committed to the discretion of the district courts."). "The court's discretion is especially broad [when], as here, it is entry of default that is being set aside, rather than a default judgment." *O'Connor v. State of Nev.*, 27 F.3d 357, 364 (9<sup>th</sup> Cir. 1994).

"To determine good cause, a court must 'consider[ ] three

factors: (1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment would prejudice' the other party." *United States v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9<sup>th</sup> Cir. 2010)(quoting *Franchise Holding II, LLC v. Huntington Restaurants Group., Inc.*, 375 F.3d 922, 925 (9<sup>th</sup> Cir. 2004)). "This standard . . . is disjunctive, such that a finding that any one of these factors is true is sufficient reason for the district court to refuse to set aside the default." *Id.* (citing *Franchise Holding II*, 375 F.3d at 925). The party seeking to set aside the order of default bears the burden to show good cause. *Franchise Holding II*, 375 F.3d at 926.

"Crucially . . . judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *Id.* (quotation omitted). When deciding whether to vacate a order of default the court's "underlying concern . . . is to determine whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." *Hawaii Carpenters' Trust Fund v. Stone*, 794 F.2d 508, 513 (9<sup>th</sup> Cir. 1986). *See also Precision Glassworks, Inc. v. Ghannam*, No. 15-cv-03227-HSG, 2016 WL 2641475, at \*1 (N.D. Cal. May 10, 2016)

(same). To ensure that cases are decided on the merits whenever possible, the court resolves any doubt regarding whether to grant relief in favor of vacating default. *O'Connor*, 27 F.3d at 364.

### **DISCUSSION**

SLP does not allege it was improperly or untimely served. Instead, SLP moves to set aside the entry of default on the grounds that it did not engage in culpable conduct that led to the default, it has a meritorious defense, and Plaintiff will not be prejudiced by the setting aside of the entry of default.

#### **I. Culpable Conduct**

SLP alleges it did not engage in culpable conduct that led to the default. Specifically, Plaintiff notes SLP was not represented by counsel and did not have in-house counsel on December 10, 2015, when Plaintiff served the Complaint and Summons on Gregory Back, SLP then believed it was still engaged in settlement negotiations with Plaintiff's counsel, and SLP did not take note that it was required to file a responsive pleading in order to avoid default. Plaintiff asserts it was only on February 18, 2016, after Plaintiff's counsel called Sheryl England to request information as to Plaintiff's dates of employment that SLP realized the matter had moved forward.

On February 18, 2016, LaRose sent the Summons and Complaint to an attorney, Gary Sarles. When Sarles received the Complaint

and Summons, he searched PACER and found this action and the entry of default. Sarles immediately notified SLP of the default and began working to retain local counsel to file a motion to set aside the entry of default.

Plaintiff asserts SLP engaged in culpable conduct when it failed to file a responsive pleading to the Complaint notwithstanding the fact that SLP was not represented by counsel at the time Plaintiff served the Summons and Complaint on Back. Specifically, Plaintiff notes although the parties had been engaging in settlement negotiations for a period of months, on November 27, 2015, Plaintiff's counsel advised SLP via email:

Your company has until Wednesday, December 2 to waive formal service of process in this case. If you don't, I will have to formally serve the company with summons, which will officially commence the case and give you 20 days to file a formal answer (which will require a lawyer). . . . Any offers and counteroffers that you and I have made in these back-and-forth emails will no longer exist if and when I have to go ahead and serve you.

Egan Decl., Ex. 10 at 2. In addition, the Summons served on Back stated in relevant part:

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) - or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) -you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address

are:

Jon M. Egan  
Jon M. Egan, PC  
547 Fifth Street  
Lake Oswego, OR 97034-3009

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Egan Decl., Ex 1 at 20.

On this record the Court finds SLP had notice of the action and reasonably should have known it was required to file a response, and, as a result, this factor weighs against setting aside the entry of default. This Court notes that, nevertheless, courts have exercised their discretion to forgive an unrepresented defendant's mistake of law when that defendant has a meritorious defense and setting aside the default will not prejudice the plaintiff.

## **II. Meritorious Defense**

To satisfy the meritorious defense element, "[a] defendant seeking to vacate a default judgment must present specific facts that would constitute a defense." *Mesle*, 615 F.3d at 1094. The burden to show a meritorious defense in support of a motion to set aside default "is not extraordinarily heavy." *Id.* A defendant need only "allege sufficient facts that, if true, would constitute a defense." *Id.*

In its proposed Answer SLP has asserted various affirmative

defenses including waiver/estoppel. Specifically, SLP alleges Plaintiff did not report any time worked on March 22, 2015, even though Plaintiff was required to perform a "dry run" of his route and to report for a drug test on that day. In addition, SLP asserts Plaintiff did not turn in his logs reporting the hours he worked on March 26 and 27, 2015, in time to have the hours he worked on those days included in his first paycheck. SLP points out that in the Terms of Employment Agreement signed by Plaintiff, he specifically acknowledged and agreed that "[f]ailure to turn in paperwork on time . . . or failure to turn in hours as required, will result in a delay in payment." Decl. of Michael Patton, Ex. B at 2.

The Court concludes SLP has alleged facts that, if true, may constitute a defense. This factor, therefore, weighs in favor of setting aside the entry of default.

### **III. Prejudice**

"[P]rejudice exists [when] a plaintiff's 'ability to pursue [their] case will be hindered.'" *Precision Glassworks*, 2016 WL 2641475, at \*2 (quoting *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9<sup>th</sup> Cir. 2001) *overruled on other grounds by Egelhoff v. Egelhoff ex. rel. Breiner*, 532 U.S. 141, 147 (2001)). A delay "'must result in tangible harm such as a loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion' for the setting aside of



default to be prejudicial to the plaintiff." *Precision Glassworks*, 2016 WL 2641475, at \*2 (quoting *TCI Group*, 244 F.3d at 701).

Plaintiff does not allege any specific prejudice that would result if the Court set aside the entry of default, and this Court does not find any. This factor, therefore, weighs in favor of setting aside the entry of default.

As noted, default "is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *Franchise Holding II*, 375 F.3d at 926. (quotation omitted). The Court's "underlying concern . . . is to determine whether there is some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by the default." *Stone*, 794 F.2d at 513. Whenever possible, the Court must resolve any doubt regarding whether to grant relief in favor of vacating default. *O'Connor*, 27 F.3d at 364.

On balance the Court concludes on this record that there is some possibility that the outcome of this action after a full trial could be contrary to the result achieved by the default. Accordingly, the Court, in the exercise of its discretion, grants SLP's Motion and sets aside the Default Order against SLP in this matter.

**CONCLUSION**

For these reasons, the Court **GRANTS** SLP's Motion (#11) to Set Aside Default and **SETS ASIDE** the Order of Default (#8) entered against SLP on January 11, 2016. SLP's response to Plaintiff's Complaint is due **no later than May 20, 2016**.

The Court **DIRECTS** the parties to confer and to file **no later than May 31, 2016**, a jointly proposed case-management schedule. The Clerk will set a Rule 16 conference with counsel at their convenience after June 8, 2016.

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of May, 2016.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge